



**Testimony of Dan Keppen
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**Submitted to the U.S. House Water and Power Subcommittee
Oversight Hearing on
*"The Bureau of Reclamation's 21st Century
Challenges in Managing, Protecting and Developing Water and Power Supplies"***

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The Honorable George Radanovich
Chairman
U.S. House Subcommittee on Water and Power
1522 Longworth House Office Building
Washington, DC 20510

Chairman Radanovich and Members of the Subcommittee:

Thank you for this opportunity to submit testimony on behalf of the Family Farm Alliance (Alliance). My name is Dan Keppen, and I serve as the executive director for the Alliance, which advocates for family farmers, ranchers, irrigation districts, and allied industries in seventeen Western states. The Alliance is focused on one mission - To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. In short, we are the Bureau of Reclamation's agricultural water customers.

I will provide the Family Farm Alliance perspective on a recently completed National Research Council report ("Report") that examined the Bureau of Reclamation's (BOR) organization, practices and culture. This Report made a number of recommendations to change the way Reclamation operates. Reclamation in turn has responded with its *Managing for Excellence* Action Plan ("Action Plan"). This testimony provides the Alliance assessment of the Report and Action Plan.

Overview of Family Farm Alliance Philosophy

The members of the Family Farm Alliance believe that streamlined federal regulation and decision-making are the keys to sound Western water policy. Wherever possible, meaningful delegation of decision-making authority and responsibility should be transferred to the local level, with less federal intrusion in basin issues. The Alliance believes strongly that Reclamation should focus on fulfilling its core mission of delivering water and power in accordance with applicable contracts, water rights, interstate compacts, and other requirements of state and federal law. Inherent in this definition of core mission is the need to prioritize the expenditure of federal funds and other resources of the Department of the Interior.

The Alliance is engaged in this process to ensure that water users are being served in the most cost-efficient manner. We are encouraged that the Subcommittee is focusing on this important matter, and we're certain that the Subcommittee and the Administration share the Alliance's goal of improving Reclamation's long-term management and transparency at a time when resources must be maximized to better develop water and power supplies in the western United States.

Similar Family Farm Alliance Efforts

A number of years ago, the Family Farm Alliance took the lead in an effort to provide for cost containment and accountability for work by the Bureau of Reclamation that was either funded in advance by water users or subject to repayment obligations. With the cooperation of the Bureau of Reclamation, great progress was made in this regard. That effort ultimately yielded improved clarity and opportunity for customers to participate in development of O&M programs for facilities in which they share the cost. In fact, Reclamation's recent Action Plan favorably comments on that earlier Alliance-Reclamation interaction. Given that federal, state, local, and private funds will be scarce, it is imperative that these efforts continue.

Family Farm Alliance Involvement in this Process

We have spent considerable time and resources in the past year working with the NRC Committee and Reclamation as the Committee developed *Managing Construction and Infrastructure in the 21st Century – Bureau of Reclamation*, which was finalized earlier this year. In June of 2005, the Alliance completed our own collection of case studies, titled: *The Bureau of Reclamation's Capability to Fulfill Its Core Mission: The Customer's Perspective* ("Alliance Report"). On June 23, 2005 in Washington, D.C., the Alliance presented its final case study report to the Committee. In May and June, the NRC Committee also sent out teams of three to tour "case study" sites throughout the West, and committee members met with Alliance representatives at three of these site visits (Boise, Denver and Sacramento).

2005 Alliance Report Findings

Overall, there is considerable agreement between the NRC Report and the Alliance Report. Our report compiled experiences from around the West – both good and bad – to provide the Committee with observations, findings and recommendations intended to be used constructively by Congress, the Bureau of Reclamation and other Interior Department agencies in dealing with the issues. Nine individual case studies were developed for irrigation districts served by six Reclamation projects in California, Colorado, Idaho, Nevada and Oregon. Our report found that:

1. Reclamation frequently demands that design work on water projects be performed by Reclamation staff.
2. Cost estimates prepared by Reclamation for proposed work are often significantly higher than reasonably anticipated costs.
3. Some customers reported unsatisfactory contract management by Reclamation staff.
4. Customers were skeptical of the technical abilities (especially relative to engineering and inspection) of Reclamation staff, particularly newer hires.
5. Reclamation sometimes shows an apparently unwillingness to document the basis for accounting of construction, NEPA work, and other cost estimates.
6. Customers believe they do not have recourse to fully understand and engage with Reclamation in decision-making and related cost estimates.
7. Reclamation tends to over-staff meetings or work on some projects.

8. Reclamation needs to improve "turn-around" times for design work or decisions.

Several contributors to our report observed that Reclamation in recent years has carried out few major new construction projects. As a consequence, the agency's engineers and management staff lack practical construction experience. The designers and builders of Reclamation's most impressive works have long since retired, and the current generation of engineers, planners and managers has not had the opportunity to develop the skills of their predecessors. Moreover, many contributors believe that Reclamation has too few licensed engineers.

Despite these negative findings, there is also evidence that Reclamation staff members from regional and area offices can play a key role in helping to find the right path to make multi-agency processes and projects work. When strong relationships are developed between Reclamation employees (especially in area or regional offices) and local water users, cooperative and innovative solutions can be reached. There are other models in the West – such as state water project grant and loan programs in California– where successful projects have been completed. A template for success might be one where state and federal agency regulators establish criteria, funding agencies write the checks, and local districts and their consultants implement and satisfy regulatory criteria and funding eligibility requirements.

Alliance Perspective on the NRC Report

It appears that the NRC Committee heard the Alliance's concerns. When we transmitted our report to the Committee last June, we noted that a template for success might be one where "state and federal agency regulators establish criteria, funding agencies write the checks, and local districts and their consultants implement and satisfy regulatory criteria and funding eligibility requirements". We also observed that meeting the challenge of modernizing the West's aging water infrastructure will require a corps of highly qualified professionals serving in the public and private sectors. We recommended that Reclamation must either hire skilled and experienced engineers and managers, or turn to the private sector to provide the human resources necessary to maintain and improve the agency's facilities.

You will note a similar flavor in the NRC Report recommendations:

- Recommendation 2a: "The commissioner should undertake an in-depth review and analysis of the Technical Service Center (TSC) to identify the needed core technical competencies, the number of technical personnel, and how the TSC should be structured for maximum efficiency to support the high-level and complex technical needs of Reclamation and its customers... This assessment and analysis should be undertaken by Reclamation's management and reviewed by an independent panel of experts, including stakeholders."
- Recommendation 2b: "The workforce should be sized to maintain the critical core competencies and technical leadership but to increase outsourcing of much of the engineering and laboratory testing work".

- Recommendation 2c "Alternative means should be developed for funding the staff and operating costs necessary for maintaining core Technical Service Center competencies, thereby reducing the proportion of engineering service costs reimbursable by customers."
- Recommendation 4 suggests that "Reclamation should establish an agency-wide policy on the appropriate types and proportions of work to be outsourced to the private sector. Operations and maintenance and other functions at Reclamation-owned facilities, including field data collection, drilling operations, routine engineering, and environmental studies, should be more aggressively outsourced where objectively determined to be feasible and economically beneficial."
- Recommendation 5b: "....Reclamation should assist its customers in their efforts to address economic constraints by adapting repayment requirements that ease borrowing requirements and extend repayment periods."
- Recommendation 6d-"A training program that incorporates current project management and stakeholder engagement tools should be developed and required for all personnel with project management responsibilities. In addition, project managers should have professional certification and experience commensurate with their responsibilities."
- Recommendation 6e. "Reclamation should give high priority to completing and publishing cost estimating directives and resist pressures to submit projects to Congress with incomplete project planning. Cost estimates that are submitted should be supported by a design concept and planning, environmental assessment, and design development documents that are sufficiently complete to support the estimates. Reclamation should develop a consistent process for evaluating project planning and the accuracy of cost estimates."

The philosophy embedded in future management scenario discussed in the Report - "federal funding and local execution" – closely matches the philosophy observed in the most successful of the case studies we presented to the NRC Committee.

Reclamation's Action Plan: *Managing for Excellence*

As previously noted, Reclamation has analyzed the report's findings and recommendations and has developed an action plan called *Managing for Excellence*. In presentations at the Alliance's annual conference in Las Vegas earlier this month, Interior Department and Reclamation officials emphasized that they are taking the findings of the NRC very seriously. There appears to be genuine enthusiasm within Reclamation about proceeding with its Action Plan. Team leaders for 41 different action items have been identified, and these leaders, senior executives, and the regional directors all recently met in Denver to begin planning for this process.

Specific Recommendations Regarding Design, Construction and Procurement

In general, we believe that Reclamation's Action Plan will provide opportunities to address the concerns identified in last year's Alliance report. We do have a few specific ideas on how we think key Report recommendations can be realized, either through the process proposed in the Action Plan, or, if necessary, by Congress:

- Give the non-federal sponsor who pays more than 50 percent of costs the right to elect to have design, procurement, and construction outsourced.
- Require Reclamation to use "performance-based" instead of "design-based" standards for any work which is paid for in part by contractors, and emphasize use of "off-the-shelf" components, as opposed to redesigning projects.
- Require reporting of actual costs of Reclamation work charged to contractors by function and specific employee (or at least job title and classification, with description of work performed) within a reasonable time period (perhaps six months).
- Require that Reclamation not perform design, construction, and procurement work unless the Commissioner certifies that there is a substantial likelihood that Reclamation can perform the work at issue at a cost equal to or less than if outsourced (based on a defined Reclamation project cost). There should also be a reporting/tracking requirement for projects that monitor actual Reclamation costs, as well as provisions for advance notification to contractors and Congress that there is a material risk that Reclamation will exceed defined Reclamation project costs.

In summary, fundamental fairness requires that when a water user is paying for work in advance or through repayment mechanisms, that water user should have the option to have the work executed in the manner that provides the most return for the investment. Qualified districts or water user organizations should be provided with the option to perform or contract with qualified private contractors any work on federal facilities that does not fall within the category of "essential governmental functions" so long as appropriate standards are met.

Specific Recommendations Regarding Reclamation's Role with Title Transfers

Reclamation has talked about the benefit of transferring title to those that can demonstrate capability to continue operating the project. It is seen as a benefit to the federal government because of the loss of liability and future financial responsibility for non-reimbursable purposes as non-reimbursable OM&R. There appears to be a handful of districts that are currently pursuing title transfers, and we hear complaints from some that title transfers of federal water projects to local sponsors are unappealing.

The Action Plan provides a process where Reclamation can address this important issue directly with customers. We will ask the Subcommittee to investigate impediments to project title

transfer, and then develop recommendations to help streamline unrealistic regulatory processes. Several of our members who have participated in title transfers have identified the cumbersome National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) processes as primary reasons for difficulties. The attached summary of one Nevada water district's experience on this matter further details this issue and is included with this testimony as "Exhibit A".

We will continue to engage with Reclamation and Congress this year as we seek to implement the Committee's recommendations.

Next Steps

Transparency and value of Reclamation's construction and O&M costs are of critical importance to our organization. The Family Farm Alliance Board of Directors earlier this year formed a subcommittee of Western landowners and water professionals to engage in the process proposed by the Action Plan. This group will continue to assess how the Report and the Action Plan may be used as a basis for potential policy and management changes at the Bureau of Reclamation.

Interior Assistant Secretary Mark Limbaugh and Commissioner John Keys have assured the Alliance and other stakeholders that we will have an active role in working with Reclamation to implement the Report's recommendations. This is very encouraging. Regular briefings and interaction with Reclamation, and possibly Congress, will be needed to keep the momentum moving on this important process. However, we will not be able to fully judge whether *Managing for Excellence* has been a success until the action items are completed in December 2007.

The Family Farm Alliance looks forward continuing to work with the Subcommittee and the Bureau of Reclamation to ensure that water users who pay for Reclamation's services get the best value for their investment.

Thank you for this opportunity to present our views today.

Exhibit A – Incentives for Title Transfers

Reclamation has talked about the benefit of transferring title to those that can demonstrate capability to continue operating the project. It is seen as a benefit to the federal government because of the loss of liability and future financial responsibility for non-reimbursable purposes as non-reimbursable OM&R. There appears to be a handful of districts that are currently pursuing title transfers, and we hear complaints that title transfers of federal water projects to local sponsors are unappealing to some water users.

Why is this?

- There are significant “up-front” costs that must be borne by the local entity.
- Reclamation bears little, if any, of the costs associated with transfers.
- If the title transfer fails, the district is totally responsible for the sunk cost of the process, even if specific activities required by Reclamation would have otherwise eventually been paid by Reclamation (e.g. cultural resources inventories).
- The infrastructure is often in a state of deterioration. Many projects are old and in need of major maintenance.
- Title transfer processes can take several years, and some participating districts have had problems with getting the proposed transfer to score positively.

Several of our members who have participated in title transfers have identified the cumbersome NEPA (National Environmental Policy Act) and National Historic Preservation Act (NHPA) processes as primary reasons for difficulties. In some areas, our members have observed that much of the resistance associated with title transfer NEPA and NHPA issues comes from internal staff at the Bureau of Reclamation.

For example, the Environmental Impact Statement for the Humboldt Project Conveyance in Nevada - informally called the Humboldt Title Transfer - has been completed and the Record of Decision issued. This process was informally started in 1991 and formally began in 1997.

Thus far Pershing County Water Control District (PCWCD or District) has expended over one million dollars in pursuit the transfer of title to the District. However, in order to comply with federal statutes addressing archaeological and other cultural resources concerns, Reclamation, with the District’s financial assistance, will need to complete identification of cultural resources efforts on the transfer lands under the NHPA, as well as other legislation including the Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act. This process may take an additional 5-7 years and is estimated to cost over \$1.3 million for

research design and inventory. PCWCD is obligated to pay half of the costs. Not included in this figure are any mitigation costs which would add significantly to the projected expenses.

The justification for this enormous expenditure of time and money is based on Section 106 regulation, 36 CFR Part 800.5(a) (2) (viii), that defines transfers of property out of Federal ownership or control as adverse effects if the agency transferring the property determines that there are inadequate legally enforceable restrictions or conditions to ensure long term preservation of the property's historic significance.

We appreciate the need for identification and protection of cultural resources in circumstances where there is the potential for alteration or destruction of the historic properties. However, in the case of the Humboldt Conveyance, the lands being transferred to PCWCD will continue to be used for exactly the same purposes and in the same manner that they are currently used under Reclamation's stewardship. Ironically, some the lands that are to be transferred to PCWCD are acquired lands, that is, patented lands held by private individuals that were acquired by United States specifically for Project purposes. In the District's view, acquired properties ought to be exempt from Section 106 regulation because in such cases the federal government is placed in the chain of title after patent and the lands are not "public" in the same sense as unpatented lands.

Reclamation and Congress should investigate these impediments to title transfer and suggest or support, as may be appropriate, language that would modify the requirements of Section 106 in such instances.